IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No.752 of 2006

Shambali Sagardu Jaiswal .. Appellant

versus

The Mumbai Municipal Corporation .. Respondent

...

Mr.Rajendra Yadav for the appellant

Mrs.Geeta Jogalekar for the respondent.

CORAM : D.G. KARNIK, J

DATED : 18th October 2006

P.C.:

1. Heard learned counsel for the appellant.

2. This appeal is directed against the order dated 21st August 2006 passed by the City Civil Court declining to grant ad-interim relief in Motion no.

2954 of 2006.

3. The respondent Corporation issued a notice dated 6th May 2005 to the appellant to show cause why the unauthorised suit structure in respect of which the present appeal relates should not be demolished. After granting an opportunity to the appellant, the respondent passed an order of demolition of the suit structure on 12th August 2006. The appellant challenged the said order by filing of a suit in the City Civil Court. Therein the appellant took out a motion for interim injunction. By the order dated 21st August 2006, City Civil Court declined to grant ad-interim injunction. That order is impugned in this appeal.

4. Learned counsel for the appellant submitted that the suit structure was in existence prior to 1st January 1995 and all unauthorised residential structures prior to that date are protected by the Government Resolution. No evidence was produced before the City Civil Court to show that the suit structure was erected prior to 1st January 1995. Reliance was placed upon the election identity card. Learned City Civil Judge has considered the election identity card;

the address given therein is different than the address of the suit premises. Learned City Civil Judge, in my view, was right in coming to the conclusion that the election identity card was of no assistance to show existence of the suit structure prior to 1st January 1995.

5. Learned counsel for the appellant further submitted that the impugned order has not been passed by the Commissioner and therefore order is without jurisdiction. Section 68 of the Mumbai Municipal Corporation gives power to the Commissioner to delegate his powers to his subordinates. The impugned order refers to the delegation u/s.68. This contention therefore also has no merit.

6. Learned counsel lastly submitted that the land on which the suit structure was erected is declared as a slum and therefore, Commissioner cannot demolish the structure. No notification issued under the Slums Act was produced. In the circumstances, this contention is also rejected.

7. There is no merit in the appeal which is hereby dismissed summarily.

(D.G. KARNIK, J)